

**Calendar No. 28**

104TH CONGRESS  
1ST SESSION

**H. R. 988**

**AN ACT**

To reform the Federal civil justice system.

MARCH 15, 1995

Read the second time and placed on the calendar

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### IN THE SENATE OF THE UNITED STATES

MARCH 9 (legislative day, MARCH 6), 1995

Received

MARCH 10 (legislative day, MARCH 6), 1995

Read the first time

MARCH 15, 1995

Read the second time and placed on the calendar

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## AN ACT

To reform the Federal civil justice system.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Attorney Accountabil-  
5       ity Act of 1995”.

1 **SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FED-**  
2 **ERAL CIVIL DIVERSITY LITIGATION AFTER**  
3 **AN OFFER OF SETTLEMENT.**

4 Section 1332 of title 28, United States Code, is  
5 amended by adding at the end the following:

6 “(e)(1) In any action over which the court has juris-  
7 diction under this section, any party may, at any time not  
8 less than 10 days before trial, serve upon any adverse  
9 party a written offer to settle a claim or claims for money  
10 or property or to the effect specified in the offer, including  
11 a motion to dismiss all claims, and to enter into a stipula-  
12 tion dismissing the claim or claims or allowing judgment  
13 to be entered according to the terms of the offer. Any such  
14 offer, together with proof of service thereof, shall be filed  
15 with the clerk of the court.

16 “(2) If the party receiving an offer under paragraph  
17 (1) serves written notice on the offeror that the offer is  
18 accepted, either party may then file with the clerk of the  
19 court the notice of acceptance, together with proof of serv-  
20 ice thereof.

21 “(3) The fact that an offer under paragraph (1) is  
22 made but not accepted does not preclude a subsequent  
23 offer under paragraph (1). Evidence of an offer is not ad-  
24 missible for any purpose except in proceedings to enforce  
25 a settlement, or to determine costs and expenses under  
26 this subsection.

1       “(4) At any time before judgment is entered, the  
2 court, upon its own motion or upon the motion of any  
3 party, may exempt from this subsection any claim that  
4 the court finds presents a question of law or fact that is  
5 novel and important and that substantially affects  
6 nonparties. If a claim is exempted from this subsection,  
7 all offers made by any party under paragraph (1) with  
8 respect to that claim shall be void and have no effect.

9       “(5) If all offers made by a party under paragraph  
10 (1) with respect to a claim or claims, including any motion  
11 to dismiss all claims, are not accepted and the judgment,  
12 verdict, or order finally issued (exclusive of costs, ex-  
13 penses, and attorneys’ fees incurred after judgment or  
14 trial) in the action under this section is not more favorable  
15 to the offeree with respect to the claim or claims than the  
16 last such offer, the offeror may file with the court, within  
17 10 days after the final judgment, verdict, or order is is-  
18 sued, a petition for payment of costs and expenses, includ-  
19 ing attorneys’ fees, incurred with respect to the claim or  
20 claims from the date the last such offer was made or, if  
21 the offeree made an offer under this subsection, from the  
22 date the last such offer by the offeree was made.

23       “(6) If the court finds, pursuant to a petition filed  
24 under paragraph (5) with respect to a claim or claims,  
25 that the judgment, verdict, or order finally obtained is not

1 more favorable to the offeree with respect to the claim or  
2 claims than the last offer, the court shall order the offeree  
3 to pay the offeror's costs and expenses, including attor-  
4 neys' fees, incurred with respect to the claim or claims  
5 from the date the last offer was made or, if the offeree  
6 made an offer under this subsection, from the date the  
7 last such offer by the offeree was made, unless the court  
8 finds that requiring the payment of such costs and ex-  
9 penses would be manifestly unjust.

10       “(7) Attorney's fees under paragraph (6) shall be a  
11 reasonable attorney's fee attributable to the claim or  
12 claims involved, calculated on the basis of an hourly rate  
13 which may not exceed that which the court considers ac-  
14 ceptable in the community in which the attorney practices  
15 law, taking into account the attorney's qualifications and  
16 experience and the complexity of the case, except that the  
17 attorney's fees under paragraph (6) may not exceed—

18               “(A) the actual cost incurred by the offeree for  
19 an attorney's fee payable to an attorney for services  
20 in connection with the claim or claims; or

21               “(B) if no such cost was incurred by the offeree  
22 due to a contingency fee agreement, a reasonable  
23 cost that would have been incurred by the offeree for  
24 an attorney's noncontingent fee payable to an attor-

1       ney for services in connection with the claim or  
2       claims.

3       “(8) This subsection does not apply to any claim  
4       seeking an equitable remedy.”.

5       **SEC. 3. HONESTY IN EVIDENCE.**

6       Rule 702 of the Federal Rules of Evidence (28 U.S.C.  
7       App.) is amended—

8               (1) by inserting “(a) In general.—” before  
9       “If”, and

10              (2) by adding at the end the following:

11       “(b) Adequate basis for opinion.—Testimony in the  
12       form of an opinion by a witness that is based on scientific  
13       knowledge shall be inadmissible in evidence unless the  
14       court determines that such opinion—

15              “(1) is scientifically valid and reliable;

16              “(2) has a valid scientific connection to the fact  
17       it is offered to prove; and

18              “(3) is sufficiently reliable so that the probative  
19       value of such evidence outweighs the dangers speci-  
20       fied in rule 403.

21       “(c) Disqualification.—Testimony by a witness who  
22       is qualified as described in subdivision (a) is inadmissible  
23       in evidence if the witness is entitled to receive any com-  
24       pensation contingent on the legal disposition of any claim  
25       with respect to which the testimony is offered.

1 “(d) Scope.—Subdivision (b) does not apply to crimi-  
2 nal proceedings.”.

3 **SEC. 4. ATTORNEY ACCOUNTABILITY.**

4 (a) SANCTIONS.—Rule 11(c) of the Federal Rules of  
5 Civil Procedure (28 U.S.C. App.) is amended—

6 (1) in the matter preceding paragraph (1) by  
7 striking “may” and inserting “shall”;

8 (2) in paragraph (1)(A)—

9 (A) in the second sentence by striking “,  
10 but shall” and all that follows through “cor-  
11 rected”; and

12 (B) in the third sentence by striking  
13 “may” and inserting “shall”; and

14 (3) in paragraph (2) by striking “A sanction  
15 imposed” and all that follows through “violation.”  
16 and inserting the following: “A sanction imposed for  
17 a violation of this rule shall be sufficient to deter  
18 repetition of such conduct or comparable conduct by  
19 others similarly situated, and to compensate the par-  
20 ties that were injured by such conduct. Subject to  
21 the limitations in subparagraphs (A) and (B), the  
22 sanction may consist of an order to pay to the other  
23 party or parties the amount of the reasonable ex-  
24 penses incurred as a direct result of the filing of the  
25 pleading, motion, or other paper that is the subject

1 of the violation, including a reasonable attorney's  
2 fee.".

3 (b) APPLICABILITY TO DISCOVERY.—Rule 11 of the  
4 Federal Rules of Civil Procedure is amended by striking  
5 subdivision (d).

6 **SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

7 (a) EFFECTIVE DATE.—Subject to subsection (b),  
8 this Act and the amendments made by this Act shall take  
9 effect on the first day of the first month beginning more  
10 than 180 days after the date of the enactment of this Act.

11 (b) APPLICATION OF AMENDMENTS.—

12 (1) The amendment made by section 2 shall  
13 apply only with respect to civil actions commenced  
14 after the effective date of this Act.

15 (2) The amendments made by section 3 shall  
16 apply only with respect to cases in which a trial be-  
17 gins after the effective date of this Act.

Passed the House of Representatives March 7,  
1995.

Attest:

ROBIN H. CARLE,

*Clerk.*